



Katie M. Brown
Counsel

Duke Energy
40 W. Broad Street
Suite 690
Greenville, SC 29601

☎: 864-370-5296

Katie.Brown2@duke-energy.com

May 12, 2022

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/ Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

**Re: Public Service Commission of South Carolina – Administrative and
Procedural Matters
Docket Number: 2005-83-A**

Comments on Proposed Procedural Schedules

Dear Ms. Boyd:

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (together the “Companies”) respectfully submit these joint comments in response to the Revised Notice of Forum (the “Notice”) issued on May 5, 2022 in the above-referenced docket, as directed by the Public Service Commission of South Carolina (the “Commission”). The Companies appreciate the opportunity to share their views, and the comments set forth below are intended to assist the Commission in developing a procedural schedule for the annual fuel proceedings that will promote efficiency and fairness for all parties to these dockets.

Background

On January 29, 2021, the Commission issued Order No. 2021-57, establishing procedural schedules for electric fuel and purchased gas adjustment proceedings for the years 2021 and 2022. This Order was issued after written comments were filed by interested parties and after participation in a Virtual Forum in which proposed procedural schedules were discussed.

On September 30, 2021, in DEC’s 2021 annual fuel proceeding in Docket No. 2021-3-E, the Commission issued Order No. 2021-668. This Order required DEC, in part, to “base its testimony in future fuel dockets on a fuel forecast prepared within thirty days of the prefiling deadline for testimony If DEC cannot base its forecast on such information, then DEC must advise and explain to the Commission why, as part of its testimony, and the best available

The Honorable Jocelyn G. Boyd

May 12, 2022

Page 2

forecasting data then should be used.” In light of the Commission’s order in the DEC fuel proceeding, DEP preemptively complied with the forecasting requirements in its 2022 annual fuel proceeding in Docket No. 2022-1-E.¹

Comments

To provide clarity regarding the current procedural schedule and time constraints facing the utilities, the chart below shows the relevant dates for the Companies’ annual fuel proceeding schedules. For reference, the Companies note that the review period for DEP is March 1 through February 28 each year, and the review period for DEC is June 1 through May 31 each year.

<u>2023 Proposed Procedural Schedule</u>				
	<u>DEP</u>		<u>DEC</u>	
	Date	Days Between	Date	Days Between
End of Review Period	2/28/2023	-	5/31/2023	-
Close of Business Date on Inception of Fuel Forecasting Process	3/10/2023	10	6/14/2023	14
Completion of Fuel Forecast Pursuant to Order No. 2021-668 and Inception of Rate-making Process	3/31/2023	21	7/8/2023	24
Proposed Utility Direct Testimony	4/20/2023	20	7/14/2023	6
Proposed Intervenor Direct Testimony	5/19/2023	29	8/16/2023	33
Proposed Utility Rebuttal Testimony	5/25/2023	6	8/22/2023	6
Proposed Intervenor Surrebuttal Testimony	5/30/2023	5	8/28/2023	6
Hearing	6/1/2023	2	8/31/2023	3

<u>2024 Proposed Procedural Schedule</u>				
	<u>DEP</u>		<u>DEC</u>	
	Date	Days Between	Date	Days Between
End of Review Period	2/28/2024	-	5/31/2024	-
Close of Business Date on Inception of Fuel Forecasting Process	3/10/2024	10	6/10/2024	10
Completion of Fuel Forecast Pursuant to Order No. 2021-668 and Inception of Rate-making Process	3/31/2024	21	7/8/2024	28
Proposed Utility Direct Testimony	4/18/2024	18	7/12/2024	4
Proposed Intervenor Direct Testimony	5/17/2024	29	8/12/2024	31
Proposed Utility Rebuttal Testimony	5/23/2024	6	8/19/2024	7
Proposed Intervenor Surrebuttal Testimony	5/28/2024	5	8/26/2024	7

¹ DEP was unable to base its proposed billed rates on a forecast prepared within 30 day of filing direct testimony; however, DEP was able to base its proposed billed rates on a forecast prepared within 42 days of filing direct testimony.

Hearing	5/30/2024	2	8/29/2024	3
---------	-----------	---	-----------	---

<u>2025 Proposed Procedural Schedule</u>				
	<u>DEP</u>		<u>DEC</u>	
	Date	Days Between	Date	Days Between
End of Review Period	2/28/2025	-	5/31/2025	-
Close of Business Date on Inception of Fuel Forecasting Process	3/10/2025	10	6/10/2025	10
Completion of Fuel Forecast Pursuant to Order No. 2021-668 and Inception of Rate-making Process	3/31/2025	21	7/8/2025	28
Proposed Utility Direct Testimony	4/17/2025	17	7/14/2025	6
Proposed Intervenor Direct Testimony	5/16/2025	29	8/14/2025	31
Proposed Utility Rebuttal Testimony	5/22/2025	6	8/19/2025	5
Proposed Intervenor Surrebuttal Testimony	5/27/2025	5	8/25/2025	6
Hearing	5/29/2025	2	8/28/2025	3

I. Direct Testimony Filing Date

The procedural schedules proposed in the May 5, 2022 Notice contemplate increasingly earlier deadlines for pre-filing direct testimony in DEC's and DEP's 2023, 2024, and 2025 annual fuel proceedings. While DEP's 2023 proposed procedural schedule maintains the same direct testimony deadline as the 2022 fuel proceeding (April 20), DEC's 2023 direct testimony deadline is set for July 14, more than two weeks earlier than the 2022 deadline (July 29).

Following Commission Order No. 2021-668's issuance in Docket No. 2021-3-E, which requires DEC to "base its testimony in future fuel dockets on a fuel forecast prepared within 30 days of the pre-filing deadline for testimony . . . or advise and explain why it cannot," both DEC and DEP restructured the timing of their fuel forecasts using existing internal resources and have added two new forecasts to the previously-existing four quarterly forecasts. This restructuring involved numerous internal discussions impacting several departments within the Companies that utilize forecast data for various purposes, and the Companies have taken great steps to compress the timing of the forecast from beginning to end to deliver a more current and timely forecast on which to propose rates in their annual fuel proceedings.

Accelerating the Companies' pre-filed direct testimony deadline—in particular, accelerating DEC's pre-filed direct testimony deadline by 2 weeks—would not allow sufficient time to prepare the annual fuel filings and would undermine the Companies' recent efforts to restructure the forecast timing. In future fuel proceedings, DEP intends to base its fuel forecast on data available as of the close of business on or around March 10 and anticipates the fuel forecast will be completed and available to DEP's witnesses by approximately March 31 of each year.² Given this timeline, DEP would have challenges with the pre-filed direct testimony deadlines

² These dates are approximate and subject to change from year to year.

The Honorable Jocelyn G. Boyd

May 12, 2022

Page 4

proposed, particularly with the deadline proposed for the 2025 proceeding as it allows DEP's witnesses only 17 days to prepare and file direct testimony following completion of the fuel forecast. Likewise, DEC intends to base its fuel forecast on data available as of the close of business on or around June 10 and anticipates that the fuel forecast will be completed and available to DEC's witnesses by approximately July 8 of each year.³ Under the DEC procedural schedule proposed for 2024, DEC witnesses would be expected to file direct testimony on July 12, 2024, which is a mere 4 days after receipt of the forecast. The proposed procedural schedules may also impact the Companies' requirements to provide forecasts to ORS and other interested parties on an intermittent basis, as ordered in the most recent annual fuel proceedings for each of the Companies.

In order to prepare direct testimony and propose fuel rates, the utility must use three key pieces of information: (1) the load forecast; (2) the Fuel and Operations Forecasts; and (3) the actual monthly fuel report from the final month of the review period. Importantly, actual fuel cost data for the final month of each utility's review period is not finalized until the end of the following month. Thus, the months of March (DEP) and June (DEC) are consumed with preparing the monthly fuel report, which is due to be filed by March 31 for DEP and June 30 for DEC. The same Company staff are responsible for preparing the monthly fuel report and drafting testimony for the fuel proceedings.

In addition to the filing deadlines, the Companies begin receiving substantial information requests from ORS approximately one month prior to the direct testimony filing deadlines, and many of the Companies' employees are simultaneously preparing responses to information requests and drafting witness testimony. For the 2021 fuel proceedings, DEP's responses to ORS's First and Continuing Audit Information Requests ("AIRs") were due on March 22, and DEC's responses to ORS's First AIRs were due on June 22.

Further accelerating the direct testimony deadlines will impose a significant burden on the Companies' resources and employees and would be difficult, if not impossible, to accommodate with current resources. It would likely require the hiring of additional subject matter experts, which will ultimately increase costs to ratepayers.

II. Timing of Surrebuttal Testimony

The Companies are concerned that the proposed procedural schedule effectively eliminates any meaningful opportunity for the Companies to prepare a response to surrebuttal testimony before the start of the evidentiary hearing. The proposed schedules allow for 2 or 3 days between the filing and service of other parties' surrebuttal testimony and the hearing. At the same time, other parties would have more than a week to review and evaluate the Companies' rebuttal testimony ahead of the hearing, and more than six weeks to review and evaluate the Companies' direct testimony. The short period of time in the proposed schedule between the filing of other parties' surrebuttal testimony and the hearing compromises procedural fairness and the Companies' due process rights, and is inconsistent with the Commission's own regulations and

³ These dates are approximate and subject to change from year to year.

The Honorable Jocelyn G. Boyd

May 12, 2022

Page 5

with South Carolina law. *See* S.C. CONST. art. I, § 22; S.C. Code Ann. Regs. 103-829 & -833; *Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 107, 708 S.E.2d 755, 761 (2011); *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 439, 319 S.E.2d 695, 700 (1984).

The Companies believe that a procedural schedule which sets a surrebuttal testimony filing mere days before the hearing will fundamentally compromise the procedural fairness of the proceedings. As the Commission has previously concluded, the purpose of pre-filing testimony is to provide for notice of the issues, accord fairness to all parties, and allow for a more orderly and efficient hearing. *See* Order No. 1996-259-WS at 2, Docket No. 1996-629 (Sept. 10, 1996); *see also* S.C. Code Ann. Regs. 103-802 (“[The Commission's regulations concerning Practice and Procedure] are intended to insure that all parties participating in proceedings before the Commission will be accorded the procedural fairness to which they are entitled by law.”). Permitting surrebuttal testimony to be filed just days before the hearing would not serve these goals, and would compromise the procedural fairness of the proceeding in contravention of S.C. Code Ann. Regs. 103-802 and South Carolina case law. *See, e.g., Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 381, 453 S.E.2d 880, 883 (1994) (“[A] reviewing court has the duty to examine the procedural methods employed at an administrative hearing to ensure that a fair and impartial procedure was used.”).

Utilities have a right to understand not only the substance of surrebuttal testimony, but also the underlying basis for the positions articulated therein. The proposed schedules significantly restrict the Companies’ ability to review and understand surrebuttal testimony itself, much less permit them to obtain discovery regarding its underlying support. The proposed procedural schedules effectively eliminate the Companies’ ability to propound discovery or file any necessary motions on the surrebuttal testimony, which unfairly prejudices the Companies at the evidentiary hearing. Further, when the deadline for surrebuttal testimony is less than 10 days before a hearing, it is impossible for the Company to file written motions or issue discovery in compliance with the Commission’s regulations. The Companies recognize that there is limited time from the beginning of fuel proceedings until the date the rates go into effect. However, due process demands that the Companies be afforded notice and a meaningful opportunity to respond to the testimony presented by other parties. The proposed procedural schedules (1) significantly restrict the Companies’ ability to review and understand the surrebuttal testimony itself and (2) prevent the Companies from obtaining discovery regarding the surrebuttal testimony’s underlying support in order to properly respond to the case brought by intervenors.

Conclusion

Rather than adjusting the direct testimony deadlines for the 2023-2025 fuel proceedings, the Companies recommend continuing to use the existing deadlines that have been set for the 2022 fuel proceedings. This would set DEP’s direct testimony deadlines for April 20, 2023, April 22, 2024, and April 21, 2025 and DEC’s direct testimony deadlines for July 31, 2023, July 29, 2024, and July 29, 2025. However, the Companies respectfully recommend adding a minimum of 7 days

The Honorable Jocelyn G. Boyd

May 12, 2022

Page 6

between the filing of surrebuttal testimony and the hearing so that the Companies have sufficient time to review and evaluate the testimony prior to the hearing.

Sincerely,

A handwritten signature in blue ink that reads "Katie M. Brown". The signature is written in a cursive, flowing style.

Katie M. Brown

cc: Parties of record